

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: C.R. BARD, INC., PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL NO. 2187

IN RE: AMERICAN MEDICAL SYSTEMS, INC., PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL NO. 2325

IN RE: BOSTON SCIENTIFIC, PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL NO. 2326

IN RE: ETHICON, INC., PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL NO. 2327

IN RE: COLOPLAST PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY
LITIGATION

MDL NO. 2387

IN RE: COOK MEDICAL, INC, PELVIC REPAIR
SYSTEM PRODUCTS LIABILITY LITIGATION

MDL NO. 2440

IN RE NEOMEDIC PELVIC REPAIR SYSTEM
PRODUCT LIABILITY LITIGATION

MDL NO. 2511

THIS DOCUMENT RELATES TO ALL CASES

**REPLY TO RESPONSE IN OPPOSITION TO MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ADDITIONAL DISCOVERY DIRECTED AT THE FEE AND
COST COMMITTEE IN CONNECTION WITH THE REQUEST FOR ALLOCATION
OF AGGREGATE COMMON BENEFIT AND COST AWARD**

Pursuant to the Federal Rules of Civil Procedure, Kline & Specter, P.C. ("Kline & Specter") hereby submits this Reply to the Fee and Cost Committee's Response to Kline & Specter's Fourth Motion to Compel Discovery.

In its Response the FCC makes several claims and assertions that only emphasize the need for transparency and discovery in this litigation. The FCC presents a new argument in its Response, stating that:

1. KS knows full well that the 5% holdback was funded primarily by a reduction in attorneys' fees by the individual case-handling attorneys. For example, the FCC is aware that many firms paid 4 percent of the 5 percent holdback by reducing their attorneys' fees by 4 percentage points (e.g., a 40% fee was reduced to 36%), with 1 percentage point paid from the client's recovery. *See* FCC's Response p. 5.

This information, that firms reduced their fees to pay the 5% fee assessment, is new, unsupported, unverified, non-specific and apparently based on hearsay. Kline & Specter requests that the FCC specify exactly what information they have regarding this brand new assertion. The need for transparency, and discovery, is underscored by this new, troubling information provided by the FCC.

The FCC also stated the following with regards to settlement amount information:

2. KS's arguments regarding the alleged inadequacy of any other firm's settlement values are baseless. **KS has no knowledge regarding the values of settlements** entered by any other firm in this litigation, nor is it entitled to such information. *See* FCC's Response p. 4.

The FCC is correct in its statement that Kline & Specter does not have this information. Hence, the need for discovery. As asserted by Kline & Specter in previous briefing, nowhere in the FCC's initial petitions, recommendations, or pleadings does the FCC reveal the precise number of cases settled or the per case settlement average. Plainly, no intelligent assessment can be made of the results obtained without first knowing the results obtained. The FCC continues to thwart any efforts by Kline & Specter to obtain this information under the guise of confidentiality. However, while communications between FCC members might be confidential, the information regarding settlement amounts is not and should be provided.

The FCC continues to fail to provide any reason why providing the requested information would be detrimental or burdensome. If there has been fair dealing, why does the FCC continue to refuse to provide the information? To the contrary, the requested information is necessary and should be provided.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lee B. Balefsky, certify that on January 22, 2019, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.



Lee B. Balefsky, Esq.